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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. _____

NORMA SCHEELHAASE,
Petitioner,

vs.

WOODBURY CENTRAL COMMUNITY SCHOOL DISTRICT, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Respondents request that the Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit be denied in this case.

COMMENTS ON QUESTIONS PRESENTED BY PETITIONER

Petitioner sets out three separate questions for presentation to this Court and respondents comment as follows:

(1) Petitioner's first question is whether, consistent with the due process clause of the Fourteenth Amendment, a public employee who lacks a "property interest" in continued employment may be terminated arbitrarily and capriciously.

This is a patently "false issue" since the termination in this case was not arbitrary or capricious as was specifically found by a concurring opinion in the Eighth Circuit Court of Appeals.

(2) Petitioner next presents the question of whether the Iowa "continuing contract" statute confers upon a ten-year teacher a property interest in continued employment entitling her to due process protection. She could ask for nothing more even if she were tenured.

This is also a straw man issue because she was in fact given both procedural and substantive due process protection—she was not arbitrarily terminated and she was given a hearing.

(3) Petitioner next asks that this Court determine whether it is arbitrary and capricious for a school board to terminate a teacher's employment for the sole reason that her students scored below average on standardized achievement tests, where the evidence introduced at the school board hearing disclosed that the publisher of the tests and testing experts all agree that student performance of the test is not a reliable indicator of teaching performance.

This question, couched as it is in the terms that "testing experts all agree" completely disregards the Record in this case in that the Respondents' expert, the school superintendent, was of the opinion that the tests were valid indicators of student achievement and could be used for teacher evaluation, and even the experts of the Petitioner testified that the use of the test scores had some place in the evaluation process. Since, as was found by the Eighth Circuit's opinion, there was a conflict of experts on this question, the decision, was, of course, not arbitrary or capricious and this question is once again an irrelevant issue.

RESPONDENTS' STATEMENT OF THE CASE

To Petitioner's statement of the case, Respondents would add to the summary of the law found at the bottom of page three and the top of page four of the Petition that the Iowa Code has a separate statute allowing a teacher to be discharged "for cause" at any time for any "good cause".[1] This "for any good cause" section requiring full and fair investigation and a hearing is in addition to the Iowa "termination statute" and is not involved in this litigation.

Believing that it will be helpful to the Court, we set out in full in our Appendix the "termination" section (Sec. 279.13) of the Code of Iowa under which Petitioner's contract was terminated. Additionally, Iowa law extended to the Petitioner in this case, a process of administrative appeal by which any person aggrieved by any decision of a board of directors could appeal to the County Superintendent of the Schools and then to the State Board of Public Instruction for any alleged wrongs incurred.[2]

Petitioner, in this case, elected not to pursue the administrative remedies provided to her by Iowa law.

Contrary to the inferences of the Petition, it is not entirely accurate to suggest that the sole reason specified in the proposed termination of her contract was that her students had scored below the norm on certain standardized tests. The exact wording read:

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1. "Discharge of Teacher. The Board may, by a majority vote, discharge any teacher for incompetence, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the Board held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor." Iowa Code 279.24 (1973).

2. Iowa Code Chapter 290, Sections 1 through 6, set up the administrative procedure for "any person aggrieved by a decision or order of the Board of Directors of any school corporation in the matter of law or fact * * *".

"The low scholastic accomplishment as indicated by Basic Skills and I.T.E.D. tests."

This was in a preliminary letter indicating possible termination under date of March 13, 1970, signed by the Superintendent of Schools, W. B. Devine.[3]

The complete text of the April 8, 1970, official notification termination from the Superintendent and the April 11, 1970, official reason for the termination from the School Board are set out below.[4]

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3. The complete letter reads:

"The Woodbury Central School Board is considering terminating your contract at the conclusion of the current 1969-70 school year.

Under Section 279.13 of the Code of Iowa, you have the right to request a private conference with the Board. This must be done within five days of the receipt of this notice. You may also request a written statement. In you (sic) case, it will be the low scholastic accomplishment as indicated by

Basic Skills and I.T.E.D. tests."

This specification of reasons was not required by the Iowa statute in this preliminary letter

The official termination letter from the President of the School Board required by the Iowa Statute gave as the reason for termination:

"Below average scholastic accomplishment of your students in the area of your responsibility. (language arts)."

4. April 8, 1970 (letter from Superintendent Devine)
"This is official notification that your contract has been terminated effective at the end of the 1969-70 school year. This is in compliance with Sec. 279.13 of the Code of Iowa. The complete Board was in attendance and the vote was unanimous for termination."

Signed W. H. Devine.

April 11, 1970 (letter from School Board)
"In compliance with Sec. 279.13 of the Code of Iowa, the following reasons given for your contract termination.

Below average scholastic accomplishment of your students in the area of your responsibility (language arts).

Our records show that in letters sent to you on March 13 and March 23 the reason was given to you in writing. Our file copies show this fact."

Signed Lewis Foster

At pages four and five of the Petition, Petitioner quotes from portions of the manual prepared by the publishers of the tests in question and leaving the clear and misleading impression that test scores have no place in teacher evaluation. This is contrary to the facts and the Record because the manual indicates that test scores may indeed be a valuable tool in teacher evaluation in conjunction with other factors. We quote from pages twenty three and twenty four of the manual:

> "One legitimate and important use of tests of this character is the utilization of results as a partial basis for evaluating the effectiveness of instruction. * * *
>
> If, in consideration of the answers to these and many similar questions, it appears that the pupils should have made a better test performance than they did, then and only then is it safe to conclude that the teacher herself is at fault. * * *" (See Respondents' App. 18, 21.)

The Petitioner herself testified regarding most of these additional factors and she did not cite them as contributing to the poor performance of her students on the tests.[5]

Finally, in her statement of the case, Petitioner relates that in Judge Bright's concurring opinion, he disagreed with the majority's ruling "that petitioner had no protection against arbitrary and capricious employment termination,".

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5. As to some of these factors, Petitioner testified that none of the administrators told her she had to use certain methods in teaching her students or that she had to use certain materials. No one told her how she should conduct her classes or what to say or not to say. She did not feel that she had too many pupils or classes to teach. Petitioner further testified that the physical plant was proper and the text books and other materials adequate and the supervision and caliber of superintendents and principals and other teachers was at least average. (Joint Appendix, below, p. 51)

Although the opinion speaks for itself, Judge Bright's opinion found at Petitioner's App. p. 13 states:

> "* * * I think it fair to say that the concept of substantive due process is not wholly alien to the administration of public schools.
>
> We need not spell out the dimensions or limitations of that doctrine here, for I am satisfied on this record that appellee has not shown the action of the Board to have been arbitrary and capricious."

REASONS FOR DENYING WRIT

I. Since the School Board's Action in This Case Was Not Arbitrary or Capricious in a Constitutionally Objectionable Sense, Any Fourteenth Amendment or Civil Rights Questions Become Moot.

It is submitted by the Respondents, that if in fact, the termination of Petitioner's contract was not arbitrary or capricious or for a constitutionally objectionable reason, there is no need for this Court to determine whether she was entitled to protection under the due process clause, either procedurally or substantively. Since procedural due process has been conceded by the Petitioner, all that substantive due process would require is that her termination not be arbitrary or capricious or for a constitutionally objectionable reason. Arbitrary or capricious was defined in *McEnteggart* v. *Cataldo,* 451 F.2d 1109 (1st Cir., 1971) as:

> "* * * that each of the stated reasons is trivial, or unrelated to the educational process or to working relationships within the educational institution, or is wholly unsupported by basis in fact."

The definitions of "constitutionally objectionable reasons," have also been established, for instance, in the case of *Perry* v. *Sindermann,* 408 U.S. 593 (1972):

"It (the government) may not deny a benefit to a person on a basis that infringes his constitutionally protected interest—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized or inhibited."

Since the Petitioner concedes, in footnote 5 on page 9 of her Petition, that there is no "liberty" interest involved, the question must then be asked whether or not any other type of constitutionally protected interest was arbitrarily or capriciously infringed.

In support of her claim that due process prohibits termination in public employment for reasons that are arbitrary or capricious, Petitioner cites cases all of which involved serious and permanent scars on character or restrictions on liberty. *Schware* involved the very right of an individual to engage in the practice of law based on standards involving "good moral character", arrests without conviction, and membership in the Communist Party. In *Konigsberg*, once again involving the right to the practice of law, the applicant had refused to answer questions concerning political affiliations and his affiliation with the Community Party. Likewise, the *Wieman*, *Flemming* and *Fisher* cases, all cited by Petitioner, involved damage to a person's character, the right to engage in the chosen profession or a "badge of infamy" which would permanently scar an individual's reputation. Since Petitioner concedes that her "liberty"' interests were not involved, since there was no moral issue, no blight on her character, no denial of her right to teach elsewhere or any deprivation of her freedom of expression, the above cited cases are inapplicable to the facts of this case. The test of determining whether a termination is unconstitutionally

arbitrary or capricious is set out in *McEnteggart* v. *Cataldo, supra,* and adopted by the Eighth Circuit in *Fisher* v. *Snyder,* 476 F.2d 375 (8th Cir., 1973). Accordingly, a dismissal is arbitrary and capricious if the stated reason is:

(1) trivial;

(2) unrelated to the educational process or to working relationships within the educational institution;

(3) wholly unsupported by basis in fact.

In light of these three guidelines, the use of the poor scholastic accomplishment of Petitioner's students, as indicated by test scores, can obviously be seen as not trivial, is definitely related to the educational process since the testing was a uniform measurement of the achievement of the students, and had a basis in fact in that the Superintendent testified that he felt that the use of test scores, under the circumstances, based on his long experience, was valid and some of Petitioner's own experts testified that they felt the use of test scores had some place in teacher evaluation. Petitioner's own witnesses admit that there is no uniformity in criteria for teacher evaluation—it varies from town to town.[6] The lack of the arbitrary and capricious nature of the termination in this case was specifically found in the Court below in Judge Bright's concurring opinion, the relevant portions found at pages 15 and 16 of Petitioner's Appendix:

> "But in the Woodbury School District, based upon his education and training, the Superintendent arrived at a contrary determination relating to students in Mrs. Scheelhaase's class. Thus, his decision, even

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6. Petitioner's witness, William Robinson, testified that teacher evaluation is not standardized—you might find different tests for evaluating teachers as you go from community to community. (Joint Appendix, below, p. 60)

though premised upon an apparently erroneous 'expert opinion,' cannot be faulted as arbitrary and capricious. The Board's mere mistake in judgment or in weighing the evidence does not demonstrate any violation or substantive due process.

The Superintendent and the Board for the Woodbury, Iowa, Central Community School District possessed the right and responsibility of evaluating its teacher personnel, and such evaluations, where they are based on some evidence, even though possibly erroneous, will not serve to make those determinations subject to judicial review as unconstitutional, arbitrary and capricious."

II. *Roth* and *Sindermann* Resolved Any Conflicts.

Petitioner, in Division I of her Argument, alleges that the decision below conflicts with the decisions of several other circuits and prior declarations of the Supreme Court.

All of the Circuit Court cases cited by petitioner as indicating a conflict between circuits were decided prior to and were discussed by the Supreme Court in *Roth* and *Sindermann*. Whatever conflicts may have existed were resolved by the broad guidelines for determining property rights entitled to due process protection as set out in *Roth* and *Sindermann*.

Respondents believe the Eighth Circuit has very thoroughly and properly analyzed *Roth* and *Sindermann* and the law as it applies to termination of public employees in this case and in *Harnett* v. *Ulett*, 466 F.2d 113 (8th Cir., 1972).

This Court has recently reaffirmed that *Roth* and *Sindermann* announce the guidelines to be followed, and as to Petitioner's claim that even absent a due process pro-

tected property interest, she cannot be arbitrarily terminated, said in *Arnett* v. *Kennedy*, 42 U.S.L.W. 4513, at 4518 (1974):

> "* * * we decline to conclude that the substantive right may be viewed wholly apart from the procedure provided for its enforcement. The employee's statutorily defined right is not a guarantee against removal without cause in the abstract, * * *"

III. Iowa Law Controls Nature of Petitioner's Contract.

In the second division of Petitioner's Argument, Petitioner asks that this Court determine, contrary to the determination made by the Court below, that a public school teacher in Iowa had a "property" interest in her continuing employment.

This Court, in *Roth* and *Sindermann*, *supra*, has carefully set out all of the guidelines needed to determine whether or not a constitutionally protected property interest existed and these guidelines were followed by the Eighth Circuit in this case. *Roth* and *Sindermann* both hold that in determining whether a teacher has a property interest in continued employment depends upon the contract of employment, the laws of the state, the rules and regulations of the school district or the explicit understandings concerning tenure.

The record in this case shows no explicit understandings, no "unwritten" rule or understanding concerning continued employment, no basis for an implied agreement of continued employment. Much to the contrary, the law of the State of Iowa is very explicit that a contract of employment cannot be for more than "the ensuing school year". Mr. Chief Justice Burger in a special concurrence

in both *Sindermann* and *Roth* emphasizes the importance of state law.

> "* * * There is one central point in both decisions that I would like to underscore since it may have been obscured in the comprehensive discussion of the cases. That point is that the relationship between a state institution and one of its teachers is essentially a matter of state concern and state law. * * * Thus whether a particular teacher in a particular context has any right to such administrative hearing hinges on a question of state law."

In addition to Iowa's statute limiting a teacher's contract to the ensuing school year, the Iowa Supreme Court has interpreted the statute relevant here and explained its purpose in *Miner* v. *Lovilia Independent School District*, 212 Ia. 973, 234 N.W. 817 (1931) as follows:

> "It is argued that this statute was enacted for the protection of the teacher. There is quite as much reason for saying that it was enacted primarily for protecting the school district. Prior to the enactment of this particular feature of the statute, there existed in many parts of the state quite a notorious and nefarious practice on the part of outgoing school boards whereby teachers selected by the outgoing board were employed for a term of years and this was done for the purpose of circumventing the incoming school board in their legitimate selection of teachers during the terms of their own incumbency. The single disability contained in this section was effective to stop such practice."

The Supreme Court of the State of Iowa has likewise defined the role of the school board in the employment of teachers in the case of *Driver* v. *Independent School District of Sioux City*, 224 Ia. 393, 276 N.W. 37 (1937) when it held:

"The Trial Court was correct in holding that the matter of employment of teachers lie wholly within the discretionary power vested in the board of directors. This conclusion is borne out by the following authorities: Sec. 12441, Code, 1935; 38 C.J. pages 689, 691, 695; Neilan v. Board of Directors, 200 Ia. 860, 205 N.W. 506; Drew v. School District, 146 Ia. 721, 125 N.W. 815 * * *. (276 N.W. at 39)"

Although the Iowa statute provides in the case of a non-renewal of the teacher's contract, certain due process procedural safeguards be accorded, it is apparent that the teacher has no property interest in her continued employment. Every teacher in every school system across the State of Iowa knows that his contract is only for one year and may be terminated at the end of that year no matter how many years the teacher has been with the school system. Even though the State of Iowa has procedural safeguards in the event of a termination of a teacher's contract, has additional statutory sections covering "for cause" dismissal of a school teacher, and provides for administrative remedies in the event of any person "aggrieved" by a board decision, Iowa is, as Petitioner admits, a "non-tenure" state. To hold otherwise would frustrate the clear language of the Iowa Code and the careful interpretation of the Iowa Supreme Court regarding the intent of the statute. Since *Roth* and *Sindermann* hold that a "property interest" must be determined by the governing state law and regulations, none can be found under laws and regulations of the State of Iowa, Petitioner's second allegation must fail.

Finally, if the guidelines and representations of the state institutions must be looked to in determining whether or not there is an "expectation of re-employment", as was held in the *Roth* and *Sindermann* cases, the record in this case discloses that Petitioner's employment was predicated

upon her ability to obtain favorable classroom results. This requirement was conveyed to all teachers in the district herein concerned in the teachers' manual distributed at the opening of the school year. (See Respondents' App. p. 22)

IV. Use of Test Scores in Teacher Evaluation under This Record Does Not Present a Legal Question.

In the third section of her Argument, Petitioner asks that this Court decide a matter which is essentially an issue of educational policy, not a question of law. Petitioner is asking this Court to decide whether it is arbitrary or capricious to condition a teacher's employment upon the performance of her students on standardized achievement tests.

Petitioner then goes on to set up an artificial issue by alleging that the evidence at the School Board hearing disclosed that the publisher of the test and testing experts "all agreed" that student performance of the test is not a reliable indicator of teaching performance. However, Petitioner ignores the wording of the manual itself, set out in Respondents' App. pp. 18-21 wherein the publishers of the tests indicate that it may have some worthwhile ingredient in the entire evaluation process. The Iowa Code termination statute does not require the Board of Education to present testimony, or witnesses, or any evidence to rebut or refute that presented by the teacher. The clear testimony of all the Board members is that they relied upon the recommendations of their superintendent and that nothing that they heard at the school board hearing changed their mind. (See Joint App. below pp. 93-110) As was held by the Court, in a special concurrence by Judge Bright, below,

> "The board was entitled to rely upon the recommendation and conclusion of its superintendent, notwithstanding the existence of strong opinions contrary to

his regarding the use of the ITBS or ITED tests as a tool for teacher evaluation. Given a choice between experts, the board was entitled to rely upon its own."

Accordingly, Petitioner's third issue must fail since the termination in this case, even if it could be concluded that Petitioner was entitled to freedom from arbitrary or capricious termination, *was not* arbitrary and capricious since it was based on conflicting facts, was related to the educational process, and was not trivial.

CONCLUSION

The Petition should be denied because there are no constitutionally protected or civil rights involved. Petitioner had no constitutionally protected property interest in re-employment, particularly under Iowa statute and case law. Even if she did have some substantive due process rights, they were not violated. Her termination was for reasons related to the educational process, with some basis in fact based upon the Superintendent's analysis and recommendation. No First Amendment rights are involved. She was not terminated for constitutionally impermissible reasons. Her character was not sullied. Her liberty was not involved. She was given procedural due process.

In short, there are no civil rights involved and the Circuit Court properly dismissed the action. No broad legitimate purpose would be served so the writ should be denied.

Respectfully submitted,

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APPENDIX

IOWA CODE SECTION 279.13 (1973)

279.13 Contracts with teachers—automatic continuation—exchange of teachers. Contracts with teachers must be in writing, and shall state the length of time the school is to be taught, the compensation per week of five days, or month of four weeks, and that the same shall be invalid if the teacher is under contract with another board of directors in the state of Iowa to teach covering the same period of time, until such contract shall have been released, and such other matters as may be agreed upon, which may include employment for a term not exceeding the ensuing school year, except as otherwise authorized, and payment by the calendar or school month, signed by the president and teacher, and shall be filed with the secretary before the teacher enters upon performance of the contract but no such contract shall be entered into with any teacher for the ensuing year or any part thereof until after the organization of the board.

Boards of school directors shall have power to arrange for an exchange of teachers in the public schools under their jurisdiction with other public school corporations either within or without the state or the United States on such terms and conditions as are approved by the state superintendent of public instruction and when so arranged and approved the board may continue to pay the salary of the teacher exchanged as provided in the contract between said teacher and the board for a period of one year, and such teacher shall not lose any privileges of tenure, old-age and survivors' insurance, or certification as a result of such exchange. Said contract may be renewed each year as determined by the employing school board provided that the visiting exchange teacher is paid in full for the service ren-

dered by the school authorities with whom his contract is made. Such exchange teachers must have qualifications equivalent to the regular teacher employed by the board and who is serving as the exchange teacher and must secure a special certificate covering the subjects designated for him to teach in the public schools in which the instruction is given. The state superintendent of public instruction is hereby authorized to formulate, establish, and enforce any reasonable regulation necessary to govern the exchange of teachers as provided in this paragraph, including the waiver of Iowa certification requirements for teachers who are regularly certificated or licensed in the jurisdiction from which they come.

Said contract shall remain in force and effect for the period stated in the contract and thereafter shall be automatically continued in force and effect for equivalent periods except as modified or terminated by mutual agreement of the board of directors and the teacher, until terminated as hereinafter provided, however, no contract shall be tendered by the employing board to a teacher under its jurisdiction prior to March 1, nor be required to be signed by the teacher and returned to the board in less than twenty-one days after being tendered. On or before April 15, of each year the teacher may file his written resignation with the secretary of the board of directors, or the board may by a majority vote of the elected membership of the board, cause said contract to be terminated by written notification of termination, by a certified letter mailed to the teacher not later than the tenth day of April; provided, however, that at least ten days prior to mailing of any notice of termination the board or its agent shall inform the teacher in writing that (1) the board is considering termination of said contract and that (2) the teacher shall have the right to a private conference with the board if the teacher files a request therefor with the president or secretary of the board within five days; and if within five days

after receipt by the teacher of such written information the teacher files with the president or secretary of the board a written request for a conference and a written statement of specific reasons for considering termination, the board shall, before any notice of termination is mailed, give the teacher written notice of the time and place of such conference and at the request of the teacher, a written statement of specific reasons for considering termination, and shall hold a private conference between the board and teacher and his representative if the teacher appears at such time and place. No school board member shall be liable for any damages to any teacher if any such statement is determined to be erroneous as long as such statement was made in good faith. In event of such termination, it shall take effect at the close of the school year in which the contract is terminated by either of said methods. The teacher shall have the right to protest the action of the board, and to a hearing thereon, by notifying the president or secretary of the board in writing of such protest within twenty days of the receipt by him of the notice to terminate, in which event the board shall hold a public hearing on such protest at the next regular meeting of the board, or at a special meeting called by the president of the board for that purpose, and shall give notice in writing to the teacher of the time of the hearing on the protest. Upon the conclusion of the hearing the board shall determine the question of continuance or discontinuance of the contract by a roll call vote entered in the minutes of the board, and the action of the board shall be final. The foregoing provisions for termination shall not affect the power of the board of directors to discharge a teacher for cause under the provisions of section 279.24. The term "teacher" as used in this section shall include all certificated school employees, including superintendents. [R60, §2055; C73, §1757; C97, §2778; SS15, §2778; C24, 27, 31, 35, 39, §4229; C46, 50, 54, 58, 62, 66, 71, §279.13]

PAGES FROM DEFENDANT'S EXHIBIT F

Use on the Tests in the Evaluation of Instruction

One legitimate and important use of tests of this character is the utilization of results as a partial basis for evaluating the effectiveness of instruction. In this statement, however, the word "partial" deserves heavy emphasis.

In the first place, these tests are directly concerned only with certain basic skills and abilities, and are not intended to measure total achievement in any given subject or grade. While most of these skills and abilities appear basic or essential to nearly all types of academic achievement, it is obvious that they are not inclusive of all of the desired outcomes of instruction at the levels tested. The results obtained from these tests, therefore, will not constitute in themselves an adequate basis for, and should not be unduly emphasized in, the total evaluation of instruction. It is conceivable, although very unlikely, that some schools or classes may do well on these tests and yet be relatively deficient in relation to other important responsibilities—as, for example, in music, literature, health, or character education—and that other schools or classes obtaining below-average test results may, nevertheless, be providing an educational environment that in other respects is quite satisfactory. These tests are concerned with only those outcomes of instruction that happen to be particularly amenable to objective measurement. The measures provided can be used to distinct advantage, but their wisest use involves a full recognition of their restrictions. Let us measure and treat as objectively as possible those aspects of instruction that are susceptible to such treatment. In the meantime, let us not neglect the other less tangible but perhaps equally important aspects.

In the second place, it should be recognized that the performance of a class of pupils upon tests of this type is conditioned by a great many factors. The instructional effectiveness of the teacher is only one of these many factors. Among the other factors are: the intelligence or learning ability of the pupils, their past educational history, the quality and adequacy of the instructional materials with which the teacher has to work, the out-of-school environment of the pupils, the number of absences during the term, the general morale of the whole school system, the physical equipment of the school plant, etc. Even the best of teachers may fail to bring her pupils "up to norm" if their average intelligence is low, or if they have had poor instruction in earlier grades, or if they are inadequately provided with reference and outside reading materials, etc. Even the poorest of teachers cannot prevent her pupils from performing above the norm if they are endowed with sufficient intelligence and desire to learn and are adequately provided with good learning materials.

If, then, the pupils under teacher Clara Jones make an average score seriously below the norm on most of the tests in the battery, it does not necessarily follow that Miss Jones has not been doing all that could reasonably be expected of her in instruction. Similarly, the fact that the pupils under Mabel White made an average score well above the norm does not rule out the possibility that Miss White has been seriously negligent of her instructional duties. Before commending or criticizing any teacher for the test performance of her pupils (if indeed it is necessary to make any general comment at all), the superintendent, principal, or supervisor should consider carefully all other possible explanations for the test results. No judgment should be passed upon the effectiveness of the individual teacher until the following questions, among many others, have been answered:

1. What is the level of intelligence of the pupils in this class?
2. How adequately is the teacher supplied with effective instructional materials?
3. What kind of instruction did these pupils have in the earlier grades? How far had they progressed before they entered this class?
4. With what quality of supervisory service has this teacher been provided?
5. How large a teaching load does this teacher have? For what extra-curricular duties is she responsible?
6. From what type of social environment do these pupils come?
7. What is the general attitude toward work that pervades the whole building?
8. How good, and how well correlated, is the instruction which these pupils are now receiving in other classes? (It should be remembered that the reading teacher is not the only one who is teaching reading, the arithmetic teacher not the only one who is teaching arithmetic, etc.)
9. Considering the provisions that are made for certain skills in the local course of study (for which the teacher surely is not wholly responsible), is it to be expected that the pupils will do well on a test of those skills?

If, in consideration of the answers to these and many similar questions, it appears that the pupils should have made a better test performance than they did, then and only then is it safe to conclude that the teacher herself is at fault. Then, of course, the proper administrative or

supervisory practice would be to go to the teacher with helpful or constructive suggestions, or to demonstrate specifically to the teacher some of the precise procedures which may produce the desired results, rather than to condemn or criticize her out of hand for what has already occurred.

When intelligently used in combination with other important types of information, the results obtained from these tests should prove very valuable in the appraisal of instruction. Unless thus used in combination with other facts, however, they may do serious injustice to many teachers.

DEFENDANT'S EXHIBIT L

GENERAL INFORMATION

Every teacher should make an effort to sell his subjects to the pupils. It would perhaps be advisable for you to take the greater part of the first class period to outline the values to be gained from the study of that Particular Subject.

It seems that all good teachers should have, among other things, these four:

1. To develop interest in the thing taught.
2. To secure clear understanding of it on the part of the student.
3. To develop a feeling of security and responsibility.
4. To train pupils in ideals and attitudes that are worthy of the American way.

Teaching is an opportunity and an obligation. Let's do the job up right! A teacher's worth is not only determined by her ability to teach subject matter. Her super-

vision and instruction in other activities is just as important, for these, more directly, build ladies and gentlemen. Your pupils will reflect you. Be sure they have a good pattern.

EMPLOYMENT OF TEACHERS

In the employment and continuance of teachers' contracts, the following characteristics will receive careful consideration: Training, experience, character, personal appearance, promptness, initiative, willingness to assume responsibility, interest in community and school activities, personal professional interest and growth, discipline, daily preparation of work, technique of teaching, and *ability to get favorable classroom results.*

THE FIRST WEEK

Get ready:

Walk around the building—get to know its lay-out.

Know the school's neighborhood—stores, churches, parks, etc.

Get acquainted with your classroom. What books does it have? Are supplies needed? Do you have chalk and erasers? How will you plan for arrivals? Dismissals? Answer these and similar questions for yourself even before a child enters the classroom.

Draw up a seating plan. Have it ready so that you can enter the names of the children early. Using the seating plan you can astound the children with the fact that you know their names so quickly.

Plan the first week in detail.

A. Win the confidence of your children. Speak softly, smile. Have them talk about themselves. Tell them what supplies they will need. Give each child at least one new

book if possible. Give your class an overview of the years work. Teach something new the first day.

B. Get to know your children. Discuss, study, observe their needs and interests so that you can prepare a tentative program of work in the skill subjects, and you can begin to frame an appropriate unit of work. Cumulative records will help.

C. Set up practice routines such as arrival procedures, dismissal line-up, clothing procedure, fire drill route and regulations, seating, passing of supplies, room and desk clean-up, etc.